IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.514 OF 2005
IN
SUMMARY SUIT NO.1398 OF 2005

Goodlass Nerolac Paints Ltd. ..Plaintiff

Vs.

V.M.K.Enterprises ..Defendant

Mr.J.Mitra i/b Apte and Co. for the plaintiff

Mr.D.A.Shinde for the defendant

CORAM : S.U.KAMDAR, J
DATED : 30TH JANUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.5,82,234/-. In so far as invoices at Sr.No.1 and 2 is concerned, the learned counsel for the plaintiff states that he does not press the said claim. This suit is for approx. Rs.5,20,000/- and odd. In so far as this claim is concerned, plaintiff relies on invoice cum delivery challans which are at Ex.B1 to B21. Each of the invoice cum delivery challans has been duly acknowledged by the defendant by putting a rubber stamp. The learned counsel for the defendant

contends that delivery of the goods under each of the said invoice cum delivery challan was only with a view to store the goods and that defendant has not purchased the said goods.

2. The aforesaid contention lacks merit. He has contended that the said invoices were not prepared by the Manager of the plaintiff to conduct the said contract of the plaintiff company and not with a view to sell the said goods to defendant. However, from perusal of invoice it is clear that invoices are addressed to defendants, amount of figures are mentioned and invoice cum delivery challans are duly received. Thus, the contention that it was only meant for storage cannot be accepted. If the goods were only for storage then the defendants ought not to have acknowledged and accepted the said invoice and delivery challans and should have issued only storage receipt which is not in the present case. In the light of the aforesaid the said defence is bogus and is liable to be rejected.

3. The learned counsel has relied upon

Inspection Report dt.19.12.05 indicating that some of the goods are lying in the premises of defendant. Even if it is so it does not challenge nature and character of the suit. I find no merits in the present case.

4. The learned counsel for the defendant thereafter contended that part of the goods were returned by the defendant and acknowledgment thereof is given by the defendant. I am of the opinion that even after taking into consideration the aforesaid contention still large amount is due and payable by the defendant to the plaintiff for which there is no defence. In that light of the aforesaid matter, I direct the defendants to deposit a sum of Rs.4 Lacs within 4 weeks failing which plaintiffs will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written

Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.